MAY 1977

STAT

TO : [redacted]	DATE OF REQUEST
FROM : RLB	SUSPENSE DATE

SUBJECT: Amendments to Section 102 of National Security Act - Sources and Methods Legislation in response to request by [redacted] for Admiral Turner.

STAT

NOTES

Attached is the final version of this paper, with changes made per your request.

RLB
your file copy

COORDINATED WITH *(list names as well as offices)*

NAME	OFFICE	DATE
IAME	OFFICE	DATE
ME	OFFICE	DATE
	OFFICE	DATE

N REQUIRED BY GLC

Approve for transmittal to Admiral Turner

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI		X		
3	D/DCI/IC		X		
4	DDS&T				
5	DDI				
6	DDA				
7	DDO				
8	D/DCI/NI				
9	GC		X		
10	LC	X			
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	Asst/DCI				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
20	D/EEO				
21	ES		X		
22					
	SUSPENSE	ASAP Date			

Remarks:

STAT

Executive Secretary

4 March 1977

Date

3637 (7-76)

2 March 1977

MEMORANDUM FOR: Acting Director of Central Intelligence

FROM: Executive Assistant to DCI-Designate

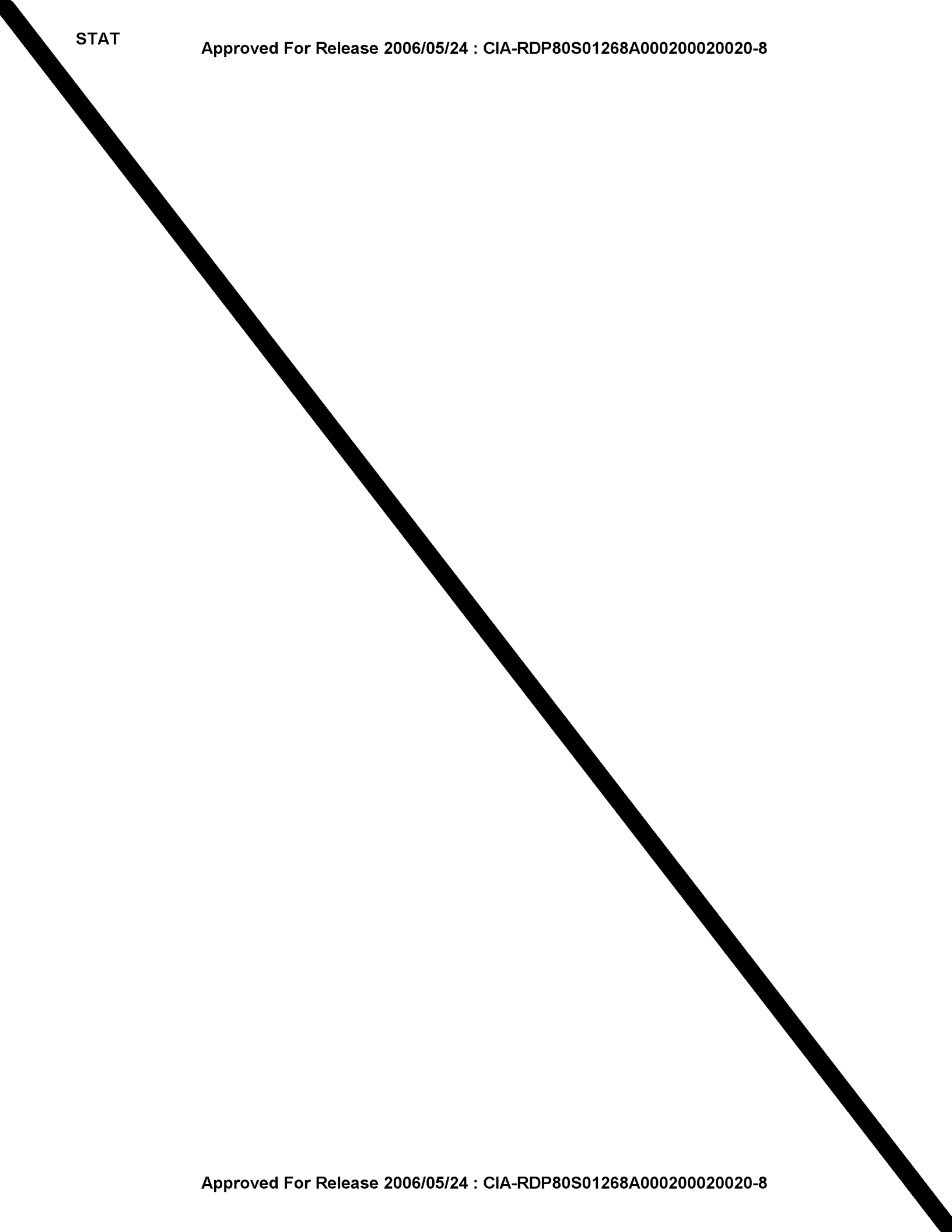
1. Admiral Turner would like to know where we stand on the proposed legislation amending Section 102 of the National Security Act of 1947. What are the objections on the part of Congress and other members of the Executive Branch to this proposal?

ISM

2. Is it the position of the Agency that if this proposal were accepted that substantially a greater disclosure of sources and methods could be made?

3. Does the proposed legislation which would authorize a Director to delegate any of the authorities vested in him contravene Executive Order 11905 which clearly looks to the Director to establish priorities, submit a budget and act as a primary Presidential Advisor on foreign intelligence and watchdog over activities in gaining and analyzing intelligence?

STAT



Approved For Release 2006/05/24 : CIA-RDP80S01268A000200020020-8

AMENDMENTS TO SECTION 102 OF NATIONAL SECURITY ACT - SOURCES AND METHODS LEGISLATION

1. The President proposed in February 1976 that Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403) be amended to provide criminal penalties for the unauthorized disclosure of intelligence sources and methods. This proposal was introduced in the House as H.R. 12006 by Representative McClory (R., Ill.) but no action was taken by the 94th Congress. The language of this proposed legislation was approved by the Justice Department and this Agency's views in support of H.R. 12006 were coordinated and approved by OMB. The legislation has not yet been introduced this session and the Administration's position has not yet solidified. The President has ordered the general area of proliferation and leaks of intelligence be studied, and a letter was sent from Mr. Knoche to Attorney General Bell soliciting Justice's assistance in insuring adoption of legislation.

2. In the Congress, the Senate Select Committee on Intelligence is studying the issue of sources and methods legislation, and Senator Huddleston (D., Ky.) apparently plans to introduce a bill sometime within the next month. H.R. 12006 provides for criminal penalties only against those who disclose information they obtained based on a relationship of privity with the Government; thus, it would not apply to newsmen to whom disclosed, for example. There are a number of other limitations in the bill, including requirements that the information must have been properly classified and designated, that there had been an existing procedure to review such information, and that the information was not disclosed only to Congress per a lawful request. Further, the bill provides for in camera review of the classification and designation of the information as a matter of law not of fact, both for injunctive relief and for prosecution purposes.

3. There have been a number of concerns expressed over provisions of H.R. 12006 by congressional staffers that problably reflect concerns of Members. These relate to:

a. Determination of the proper classification and designation of the information as a matter of law rather than of fact, which would go to the jury. The feeling here is that this factor, if considered an element of the offense, should be determined by the jury. Jury consideration, of course, would open the legislation to the major shortcomings of present laws, namely, the public disclosure of the very information (or additional information) sought to be protected.

b. The extent to which a judge would or could look behind the classification and designation of the information.

The concern apparently is that the judge would be able to do no more than rubber-stamp the certification of the DCI and the Attorney General. H.R. 12006 as drafted, however, reflects the position that the classification and designation of sensitive foreign intelligence information is a function of the Executive branch and that, while some judicial discretion is incorporated in the bill, a judge should not be allowed to reexamine, redesignate and reclassify such information.

c. The arguably vague and possibly overly broad definition of "intelligence sources and methods" in H.R. 12006. An effort is being made by the Office of General Counsel and the Office of Legislative Counsel to develop more precise language, acceptable to Senator Huddleston, before a new bill is introduced.

d. The lack of protection in H.R. 12006 against adverse administrative action that might be taken against an employee as a result of any efforts on his part to pass to Congress information he believes constitutes evidence of improper or illegal activity, and which efforts would not be encompassed within the terms of the bill. As drafted, H.R. 12006 does not address this issue, and reflects the position that such concern is not directly relevant to the purposes of this legislation, that such a provision might conflict with the DCI's statutory termination authority, that this might result in actions by employees that could force the curtailment of legitimate activities, and that, in short, such a provision might result in employees operating as "private inspectors general" in spite of existing reporting remedies and requirements.

e. The standard for judicial review--in injunctive proceedings--of the classification and designation of information has been considered by some Senate staffers as too restrictive. The standard employed in H.R. 12006, that a judge shall not overturn such classification and designation unless he finds it to be "arbitrary and capricious," however, is consistent with standards utilized in other legislation providing injunctive remedies.